

REMARKS

Responsive to the Office Action mailed February 23, 2010, Applicant provides the following. Claim 1 has been cancelled without prejudice. Claims 2, 6, 9, 11, 14, 15 and 16 have been amended without adding any new matter. Claims 17-19 have been added without adding any new matter. As such, Eighteen (18) claims remain pending in the application: claims 2-19. Reconsideration of claims 2-16 in view of the amendments above and remarks below and consideration of new claims 17-19 is respectfully requested.

By way of this amendment, Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues, it is respectfully requested that the Examiner telephone the undersigned at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

**THE AMENDMENTS TO THE CLAIMS AND THE NEW CLAIMS DO NOT RAISE
ANY NEW ISSUES OR REQUIRE FURTHER SEARCHING**

In the above amendment Applicant has amended claims 2, 6, 11, 14, and 15 to further clarify the language of the claims as requested by the Examiner, to be rewritten in independent form as suggested by the Examiner, and further to incorporate allowable subject matter previously recited and determined by the Examiner as being allowable subject matter. Claims 9 and 16 have been amended to correct antecedent basis issues. New claims 17-19 have been added to incorporate allowable subject matter into already recited independent claims 11, 14 and 15. Applicants respectfully submit that the amendments and new claims do not raise any new issues or require any further searching and are only amendments to incorporate allowable subject matter to advance the claims to issuance. Support for the amendments and new claims may be found in claims 1, 2, 6, 11, 14 and 15 as originally filed. Therefore, Applicant believes that the above amendment is proper under 37 C.F.R. 1.116 and should be entered.

More specifically, regarding the new claims, new claim 17 is supported by claims 14 and 6, new claim 18 is supported by claims 15 and 6, and new claim 19 is supported by claims 11 and 6.

If this response does not result in a Notice of Allowance or a new office action, Applicant

hereby requests a timely Advisory Action.

Claim Rejections - 35 U.S.C. §112

Claims 1-16 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim that which Applicant regards as the invention.

The Examiner has rejected claims 1, 9, 11, 12, 14 and 15 for reciting claim language which is not clearly understood. Applicant has amended these claims to further clarify the language pointed out by the Examiner. As such, Applicant respectfully submits that the rejection to claims 1-16 is overcome and should be withdrawn.

Specifically, with respect to claim 1, the Examiner states that the term “metric information” is not clearly defined and further asserts that for examination purposes the term can be interpreted to mean any type of information (Office Action, pg. 2). Applicant initially notes that claim 1 has been cancelled, and the language of claim 1 has been incorporated into claims 2 and 6 to present these allowable claims in independent form. As such, the rejections of claim 1 under 35 U.S.C. 112 are discussed herein with respect to currently amended claims 2 and 6.

Applicant submits that the language of claim 1, now recited in claims 2 and 6, specifically defines that the metric information represents a processing metric. Furthermore, Applicant’s specification specifically states that metric information is information “that represents the type of processor, the number of processors, the capacity (processing speed) of individual processors, the type of executable program, the amount of memory, and other load-balanceable processing capacity (including information of whether load balancing is possible or not)” (Specification as Filed, pg. 11, lines 21-25). As stated in MPEP 2111 “the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification.’” (Quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005)). Applicant submits that in light of what is recited in claim 1, and further consistent with the definition of metric information in the specification, it is clear that metric information represents information regarding the processing capabilities of the processing devices and accordingly the term “metric information” is clearly defined. The Applicant has further amended the language of claim 1, now recited in claims 2 and 6, to recite “said metric information representing processing

capability metric of a part or whole of other information processing devices.” As such, it is further clear that the metric information refers to an array of capability information regarding the information processing devices, as recited in the specification and disclosed above.

The Examiner has further presented similar rejections to claims 11, 14 and 15 with regard to the recited “metric information” recited in claim 11, and “processing metric” recited in claims 14 and 15 (Office Action, pgs. 3-4). Applicant submits that the recited language is clearly defined at least for the same reasons as discussed above with respect to claim 1 and has further amended claims 11, 14 and 15 to recite similar language with respect to the “processing capability metric” to further clarify the language of these claims.

Additionally, with regard to the language of claim 1, now recited in claims 2 and 6, the Examiner states that “it is not clearly indicated who sent ‘information processing request’” (Office Action, pg. 2). Applicant submits that the claim is directed at the “information processing system” and that therefore it is clear that the “information processing requested” is a request for information processing from the information processing system of claim 1. The information processing may be requested by various entities and to be processed at the information processing system. Therefore, Applicant submits that who sent the “information processing request” is not relevant to the scope of the claim, and further that many different entities may request for information processing. Further, Applicant has amended the language of claim 1, now recited in claims 2 and 6, to recite, “information processing request received at said at least first information processing device” to further clarify the recited language.

The Examiner has further presented similar rejections to claims 11, 14 and 15 (Office Action, pgs. 3-4). Applicant submits that the above arguments similarly apply to these claims. Furthermore, these claims have been amended to recite similar language with respect to the information processing request.

Further, the Examiner states that “it is not clearly indicated how the comparing step is performed” in claim 1 (Office Action, pg. 2). The language of claim 1, now recited in claims 2 and 6, specifically states “comparing the magnitude of the actual load measured by the load measurement means and the metric information stored in said metric information management means” to determine at least one available device “being capable of executing a part or whole of

said information processing requested.” Therefore, the plain language of the claim indicates that the comparing is to compare the metric information and the actual load, and find an available device capable of executing a part or whole of the information processing requested. Therefore, it is clearly defined that the determination entails comparing the actual load of the information processing and the metric information of the other information processing devices to determine which device is “capable of executing a part or whole of said information processing requested.” As such, the comparing step of claim 1 is clearly defined.

The Examiner has further presented similar rejections to claims 11, 14 and 15 (Office Action, pg. 3). Applicant submits that the recited language is clearly defined at least for the same reasons as discussed above with respect to claim 1.

Furthermore, with respect to claim 9, the Examiner states that it is not clearly indicated whether plurality of information processing devices is partitioned into a plurality of clusters or program execution is partitioned into a plurality of clusters (Office Action, pg. 4). Claim 9 specifically recites, “said program execution means is partitioned into a plurality of clusters”. Therefore, it is clear, that the “program execution means” is partitioned into clusters.

Further, with respect to claim 12, the Examiner indicates that “it is not clear whether ‘another information processing device’ refers to ‘a plurality of clusters’” (Office Action, pg. 4). Claim 12 specifically recites: “The information processing device according to claim 11, further comprising: processing request means for executing required information processing corresponding to a processing request by another information processing device”. It is clear, from the language of the claim that another information processing device, is distinct from the “the plurality of clusters” recited in claim 11.

Accordingly, for the reasons discussed above, claims 2, 6, 9, 11, 12, 14 and 15 are definite and particularly point out and distinctly claim the subject matter which Applicant regards as the invention as required under 35 U.S.C. § 112. As such, Applicant respectfully request that the rejection to these claims be withdrawn.

Furthermore, claims 3-5 and 7, 8, 10, 13 and 16 depend from independent claims 2, 6, 11, 14 and 15, and therefore, the rejection of those claims should also be withdrawn.

Claim Rejections - 35 U.S.C. §103

Claims 1, 9-10 and 16 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over U.S. Publication No. 2002/0069279 (Romero) in view of U.S. Patent No. 6,356,947 (Lutterschmidt). Claims 11-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Romero, in view of Lutterschmidt and in further view of U.S. Patent No. 6,009,455 (Doyle).

While Applicants traverse these rejections, consistent with the indication of allowable subject matter, Applicants have amended independent claims 11, 14, and 15 to each include the subject matter of allowable dependent claim 2, have amended dependent claims 2 and 6 into independent form, and have canceled claim 1 without prejudice.

Specifically, independent claim 1 has been cancelled and the limitations of claim 1 have been incorporated into claims 2 and 6, which have been indicated as reciting allowable subject matter, to place these claims into independent form. Furthermore, independent claims 11, 14 and 15 have been amended to include limitations similar to that of claim 2. Support for all amendments is found in the claims as originally filed and variously throughout the specification and figures.

Accordingly, all pending independent claims include limitations all indicated as representing the allowable subject matter.

The amendments presented herein are for the purpose of pursuing the timely issuance of the allowable subject matter. Thus, the amendment of originally filed independent claims 11, 14, 15, and the cancelation of independent claim 1, should not represent a surrender of any subject matter and Applicants specifically preserve the right to present these claims in their originally filed form in a continuing application.

That is, although independent claims 11, 14 and 15 have been narrowed in scope by these amendments, and although claim 1 has been canceled without prejudice, Applicants are not conceding in this application that these claims in their original form are not patentable over the cited references. Rather, as stated above, these amendments are being made to facilitate expeditious issuance of allowable subject matter. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter

supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Specifically, Applicants reserve the right to pursue the subject matter of claims 1, 11, 14 and 15 and their respective dependent claims in their original scope, as well as other subject matter within the application, in one or more continuing application. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Accordingly, it is respectfully submitted that the rejection of remaining pending claims 2-16 is overcome and should be withdrawn.

Allowable Subject Matter

Claims 2-8 are objected to as being dependent upon a rejected base claims, but would be allowable if rewritten in independent form. As described above, Applicants have made appropriate amendments to pursue the timely issuance of this allowable subject matter. Thus, the amendment of originally filed independent claims 11, 14 and 15, and the cancellation of independent claim 1, should not represent a surrender of any subject matter and Applicants specifically preserve the right to present these claims in their originally filed form in a continuing application.

New Claims

Newly submitted claims 17-19 are believed to be allowable because they recite language similar to that recited in claim 6 which the Examiner has indicated is allowable subject matter.

Support for new claims 17-19 can be found at least in independent claims 11, 14 and 15 and claim 6 as originally filed. Specifically, new claim 17 is supported by claims 14 and 6, new claim 18 is supported by claims 15 and 6, and new claim 19 is supported by claims 11 and 6.

Claim Fees Believed to be Due

Claim fees have previously been paid in this application for a total of 20 claims with 4 independent claims. The above amendment results in there now being a total of 18 claims with 8 independent claims. Thus, fees are believed to be due for 4 independent claims. Payment is being submitted herewith via EFS web.

CONCLUSION

Applicant submits that the above amendments and remarks place the pending claims in a condition for allowance. Therefore, a Notice of Allowance is respectfully requested.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY

Dated: April 30, 2010

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